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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/897,826	07/03/2001	Stephen Michael Reuning	Diedre/Candidate	3851

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EXAMINER

RIMELL, SAMUEL G

ART UNIT	PAPER NUMBER
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2164

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/897,826

Applicant(s)

REUNING, STEPHEN MICHAEL

Examiner

Sam Rimell

Art Unit

2164

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


SAM RIMELL
PRIMARY EXAMINER

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

Application/Control Number: 09/897,826

Art Unit: 2164

A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on November 7, 2005 has been entered.

Claims 1-19 are rejected under 35 U.S.C. 102(e) as being anticipated by McGovern et al. (U.S. Patent 6,370,510).

Claim 1: McGovern et al. discloses a system in which job seekers voluntarily submit resumes to a company web site and which is subsequently stored in a company database (col. 17, lines 23-23). The resume is considered to be a web page by reason that it is converted into HTML format before storage in the company database (col. 17, line 16) and by additional reason that the resume can be displayed on program running on a web browser (col. 7, lines 5-10).

The system of McGovern et al. discloses a filter (col. 18, lines 51-67) in which a company employee (the hiring contact) can use a filtering program (search program) to search for specific resumes in the database. The resumes can also be scored (col. 17, lines 59-66), which acts and another type of filter mechanism.

The system of McGovern et al. further discloses an e-mail address extractor (col. 18, lines 24-35) in which the company computer will extract an e-mail address from its database and

Art Unit: 2164

use that address to send correspondence to the job applicant who submitted the resume. The e-mail address is extracted from the resume database because the applicant does not have to submit the resume using e-mail, or in any kind of e-mail format (col. 17, lines 18-23).

Claim 2: The resumes are web pages and the web pages can be scored (col. 17, lines 60-65).

Claim 3: The company computer is configured to send an e-mail to the job candidate who submitted the resume (col. 18, lines 30-35).

Claim 4: The system can generate a score for the resume (col. 17, line 60). Any job applicant can receive an e-mail (col. 18, lines 24-35). A job candidate that scores low can receive a rejection letter while a job candidate who scores high can receive a job offer.

Claim 5: The e-mails sent to the job candidates pertain to the job opportunity.

Claim 6: See remarks for claim 1.

Claim 7: See remarks for claim 3.

Claim 8: See remarks for claim 5.

Claim 9: The e-mail addresses are extracted from the resume data in the database. The is considered to read as one level of extraction.

Claim 10: The system of McGovern et al. has two filtering mechanisms, one for searching resumes using keywords (col. 18, lines 51-67) and one for filtering by scoring (col. 17, lines 60-66). The mechanism using keyword searching meets the limitations of this claim.

Claim 11: Keyword searching is considered to be an “advanced natural language screening technology”.

Claim 12: Key word searching inherently involves the usage of rules to evaluate the searched documents.

Claim 13: See remarks for claim 1.

Claim 14: See remarks for claim 3.

Claim 15: See remarks for claim 5.

Claim 16: See remarks for claim 9.

Claim 17: See remarks for claim 10.

Claim 18: See remarks for claim 11.

Claim 19: See remarks for claim 12.

Response to Argument

Affidavit under 37 CFR 1.131: Applicant argues that the reference to McGovern et al. has already been antedated by a submission of an affidavit under 37 CFR 1.131 in the parent application 08/984,650, which matured into US Patent 6,381,592. Applicant states that the “office accepted” the affidavit in the parent application (page 1 of applicant’s reply of November 7, 2005). Accordingly, it must be inferred that the Examiner in the parent application found the affidavit to be effective, and that such an inference must also be carried over into the present application.

Examiner maintains that the alleged actions or inactions by a previous examiner in a patent are not at issue since they cannot be considered or addressed. In particular, MPEP 1701 states:

“Employees of the USPTO, particularly patent examiner who examined an application which matured into a patent or a reissued patent or who conducted a re-examination

Art Unit: 2164

proceeding, should not discuss or answer inquiries from any person outside the USPTO as to whether or not a certain reference or other particular evidence was considered during the examination or proceeding and whether or not the claim would have been allowed over that reference or other evidence had it been considered during the examination or proceeding”(emphasis added).

In essence, applicant is asking the Examiner to draw an inference about the Examiner's actions in the parent application and apply those inferences in the present case. Examiner maintains that under MPEP 1701, such inferences cannot be made. The Examiner cannot go back into the file history of a patented parent application and re-interpret the Examiner's intentions. In considering an affidavit under 37 CFR 1.131, the affidavit must be considered on its own merits in light of the claims currently under examination. Such affidavit cannot be examined in light of inferences drawn from another patented application.

Analysis of Affidavit under 37 CFR 1.131: Examiner has analyzed the affidavit under 37 CFR 1.131 and finds that the conception is not correlated to the claims of the present application. In other words, while the affidavit does allege a specific date of conception, the subject matter which was conceived on the conception date cannot be correlated to the current claims on appeal. As result, the affidavit under 37 CFR 1.131 is inconclusive in a determination of whether or not the claimed invention was conceived at date prior to effective filing date of McGovern et al. Since the affidavit is inconclusive in this particular analysis, it is not effective in overcoming the McGovern et al. reference.

Previous consideration of affidavit: It is noted for the record that the affidavit under 37 CFR 1.131 for which applicant is requesting consideration was previously considered and

Art Unit: 2164

addressed in the Examiner's Answer of January 26, 2004, and so the present consideration of this affidavit is a second consideration of this same affidavit.

Discussion of McGovern et al. reference: No additional discussion of the McGovern et al. reference is provided.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 2164

Any inquiry concerning this communication should be directed to Sam Rimell at
telephone number (571) 272-4084

A handwritten signature in black ink, appearing to read 'Sam Rimell', is positioned above the printed name.

Sam Rimell
Primary Examiner
Art Unit 2164